IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R.

(1) GENERAL MANAGER. V. THE LABOUR COURT, UDAIPUR AND ANOTHER.

S.B.CIVIL WRIT PETITION NO.3974/2005.

(2) GENERAL MANAGER. V. THE LABOUR COURT, UDAIPUR AND ANOTHER.

S.B.CIVIL WRIT PETITION NO.3975/2005.

Both the aforesaid writ petitions under Article 227 of the Constitution of India.

DATE OF ORDER: : JULY 11, 2005.

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS.

Mr. Vijay Bishnoi, for Petitioner.

BY THE COURT :-

REPORTABLE

A common question is involved in both the aforesaid writ petitions, therefore, they are decided by this common order.

Facts giving rise to the instant petitions are that the Labour Department made a reference to the Labour Court, Udaipur. On receiving the reference, the Labour Court, Udaipur issued notices

to the parties. On receiving notices, respondents submitted their statements of claim and the petitioner-department submitted replies to the said statements of claim. It is claimed by the respondents that before terminating their services, one month's notice or wages of one month or compensation have not been given to them. It is also claimed that the persons appointed after them are still working with the Telecommunications Department.

Before the Labour Court, Udaipur, statements of claim were submitted along with the respective affidavits and the Department submitted replies to the aforesaid statements claims, supported by the affidavits. The respondents as well as Officer-in-Charge of the Department were cross-examined before the Labour Court, Udaipur.

After hearing both the learned counsel for the parties and considering the documents produced by the respective parties, the learned Labour Court, Udaipur passed the award dated 27.8.2004, against which the instant petitions have been preferred by the Telecommunication Department, Udaipur.

It is submitted by the learned counsel for the petitioner that respondents were appointed on the post of Helper on 1.2.1978 and 1.8.1987 respectively, by the Telecommunications Department. On 6.9.1995, their services were terminated.

It is further submitted by the learned counsel for the petitioners that the respondents have not worked for more than

240 days in any calendar year. Therefore, their services have rightly been terminated by the petitioner – Department.

It is also submitted by the learned counsel for the petitioners that the learned Labour Court, Udaipur has not appreciated the material available on record. According to the learned counsel for the petitioner, the learned Labour Court has given an incorrect finding that both the respondents – Girdhari Lal and Ram Singh have worked for more than 240 days in a calendar year.

It is argued by the learned counsel for the petitioners that the Department has given complete account of working days of the respondents, but the learned Labour Court has not considered the same in its right perspective and has wrongly awarded each of the respondents an amount of Rs.45,000/- as compensation in lieu of reinstatement.

Heard learned counsel for the petitioners.

The learned Labour Court, Udaipur, after hearing all the parties and perusing the documents , held that the retrenchment of the respondents by the Department – petitioner is in violation of Section 24FGHJ & N and Section 25FGHJ & N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947') as respondents have completed 240 days in a calendar year and before retrenching their services, neither one month's notice, nor wages of one month in lieu of notice , nor the compensation was given by the petitioner – Department. The learned Labour Court

also held that after termination of services of the respondents, more than 9 years have passed, so instead giving order for their re-instatement, it will be appropriate and justiciable to award a sum of of Rs.45,000/- as compensation to each of the aforesaid respondents. The learned Labour Court also directed that if the petitioner- Department failed provide the aforesaid amount of compensation within one month, the respondents will be entitled to get 6% interest on the awarded amount.

The finding arrived by the learned Labour Court, Udaipur is a fact finding enquiry, so this Court, in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India, would not interfere with the same as the finding of the Labour Court is just and proper and is based on sound reasonings, and has been given by the learned Labour Court, after taking into consideration all objective considerations and with subjective satisfaction. In exercising the supervisory power under Article 227, the High Court does not act as an Appellate Court or Tribunal.

Apart from that, after termination of services of the workmen, more than nine years has passed, so, in exceptional circumstances, looking to the facts and circumstances of the cases, the compensation, in lieu of reinstatement, awarded by the Labour Court, is perfectly valid and justified.

Reference may be made to Haryana State Cooperative Land Development Bank v. Neelam (2005) 5 SCC 91. Similar

view has been taken by the Hon'ble Supreme Court in Mohd. Yunus v. Mohd. Mustaqim and others (AIR 1984 SC 38), in which it was held by their Lordships of the Supreme Court that the supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited to seeing that an inferior Court or Tribunal functions within the limits of its authority. Reference may also be made to the decisions of Madhyamik Shiksha Parishad, U.P. v. Anil Kumar Mishra & Others (2005) 5 SCC 122 and Allahabad Jal Sansthan v. Daya Shankar Rai and Another (2005) 5 SCC 124.

In Manager, Reserve Bank of India v. S.Mani (2005) 5 SCC 100, it was held by their Lordships of the Supreme Court that 240 days of continuous service by itself does not give right to claim for reinstatement. Section 25F provides for grant of compensation if a workman is sought to be retrenched in violation of the conditions referred to therein.

The scope of interference by this Court under Article 227 of the Constitution of India is very limited. The power under Article 227 involves a duty on the High Court to keep the inferior courts and tribunals 'within the bounds of their authority and to see that they do what their duty requires and they do it in a legal manner'. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong

decisions made within the limits of the jurisdiction of the court or tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes. The power would not be exercised by the High Court to substitute its own judgment, whether on a question of fact or of law, in place of that of the subordinate Courts, or to correct an error not being an 'error of law apparent on the face of the record'.

It may be mentioned here that under Article 227 of the Constitution of India, the High Court cannot interfere with the exercise of a discretionary power vested in the inferior Court or Tribunal, unless its finding or order is clearly perverse or patently unreasonable.

It is significant to note that the High Court's power under Article 227 of the Constitution should be exercised only when there is dereliction of duty and flagrant violation of law and should be exercised most sparingly in a case where grave injustice would be done unless the court interferes. It cannot be used as appellate or revisional forum. Apart from that, this power is exercised by the Court in its discretion and cannot be claimed as of right by any party.

Thus, the impugned award dated 27.8.2004 passed by the

learned Labour Court, Udaipur cannot be said to have been suffered from the basic infirmity and illegality and the same does not require any interference by this Court under Article 227 of the Constitution of India and both the aforesaid writ petitions deserve to be dismissed.

In the present case, as already stated above, the findings of facts of the Labour Court, Udaipur just quoted above are based on correct appreciation of evidence and material available on record and they do not suffer from any illegality. The learned Labour Court has rightly exercised its discretion by awarding compensation in lieu of reinstatement in service. There appears to be no error of law apparent on the face of the record and it cannot be said that the findings of the Labour Court are perverse or based on no material.

Thus, taking an overall view of the matter referred to above and keeping in view all the facts and circumstances of the case ,the finding of the learned Labour Court does not call for any interference.

Consequently, both the aforesaid writ petitions are dismissed in limine.

(R.P.VYAS), J.

scd